

Appl. No. 09/674,052
Atty. Docket No. CM1778Q
Amdt. dated March 4, 2005
Reply to Office Action of Dec. 29, 2004
Customer No. 27752

REMARKS

Claim Status

Claims 1 and 3 - 12 are pending in the present application. No additional claims fee is believed to be due.

Claim 5 is canceled without prejudice.

Claim 1 has been amended to more specifically characterize the claimed invention. Support for the amendment is found in the specification as exemplified by claim 5 as originally filed and on page 14, lines 22-25.

Claim 10 has been amended to more clearly characterize the claimed invention. Support for the amendment is found in the specification as exemplified by claim 10 as originally filed and in Figure 1.

Claim 3 has been amended to correct a transcriptional error. Support for the amendment can be found in the specification as exemplified by claim 3 as originally filed.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102(b) Over Gilman et al.

Claims 1 and 3-11 have been rejected under 35 USC § 102(b) as anticipated by U.S. Patent No. 5,437,653 issued to Gilman et al., hereafter "Gilman". However, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

First, the Office Action states:

Gilman discloses a laminate web wherein the second material has a bonded area greater than the bonded area of the first material as set forth in figure 1. If the entire bonded area (the length of the article as set forth in col. 3, lines 55 — 56) of the second material (20) is compared to only the outermost portion (i.e., the area to the left of the article in figure 1 where reference character "18" is located) of the bonded area of the first material (12), the second material (20) has a bonded area greater than a bonded area of the first material.

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(Office Action page 3).

Applicant cannot find support for the assertion that the second material has a bonded area greater than a bonded area of an outermost portion of the first material. Gilman appears to be silent with regard to the bonding area of the outermost portion of the first material when compared to the second material. Therefore, it appears that the Office Action is taking official notice.

Caselaw provides that “[i]n limited circumstances, it is appropriate for an examiner to take official notice of facts not in the record or to rely on ‘common knowledge’ in making a rejection, however such rejection should be judiciously applied.” MPEP §2144.03. Official notice may be taken without supporting documentary evidence only when the “facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known.” *Id.* (citing *In re Ahlert*, 424 F.2d 1088). “It is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.” *Id.* (citing *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Moreover, “[i]t would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.” § 2144.03. Official notice in this instance is not proper because the assertion of whether the second material has a higher bonded area than the outermost portion of the first material is “not capable of instant and unquestionable demonstration as being well-known.”

Second, even assuming *arguendo* that Gilman does teach that the second material has a bonded area greater than a bonded area of an outermost portion (i.e., the area to the left of the article in figure 1 where reference character “18” is located) of the first material, Gilman still fails to teach all of the claim elements of amended claim 1. Amended claim 1 recites, in part, that “said first material has a first bonded area and said second material has a second bonded area, and wherein said second bonded area is greater than said first bonded area.”

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It is well settled that "[i]n the absence of an express intent to impart a novel meaning to the claim terms, the words take on the full breadth of the ordinary and customary meanings attributed to them by those of ordinary skill in the art." *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003). A claim term's ordinary and customary meaning may be determined by reviewing "the written description, the drawings, and the prosecution history." *Id.* (citing *DeMarini Sports, Inc. v. Worth, Inc.* 239 F.3d 1314 (Fed. Cir. 2001)). "It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the ordinary and customary meaning of the terms in the claims of a patent." *Ferguson*, 350 F.3d at 1338. Furthermore, it has been held that a claim "must be interpreted in light of the teachings of the written description and purpose of the invention described therein." *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 27, 57 USPQ2d 1057 (Fed. Cir. 2000).

The application explains that:

Since the first material will be the material adjacent the wearer's skin in use, the first material is preferably soft. With thermally bonded nonwoven webs, the amount of bonded area of the web is a factor in determining the softness and also the tensile strength of the web. As the bonded area of the web increases, the softness decreases and the tensile strength increases. In contrast, as the bonded area of the web decreases, the softness increases and the tensile strength decreases. In order to provide a laminate web which is both soft and strong, it is preferred that the first material have a relatively lower bonded area to provide softness and the second material have a relatively higher bonded area to provide strength.

(Application page 14, lines 15-22).

The use of the term "bonded area" within the application is in the context of thermally bonded nonwoven webs. Thermally bonded nonwoven webs are typically created by bonding the fibers which makeup the nonwoven together. Fibers of a thermally bonded nonwoven web can be bonded via heated calender rolls. As the fibers pass through the heated calender rolls, the fibers are melted in certain spots to form bonds between the fibers. The calender rolls can be etched such that the number of bonds

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between fibers from one nonwoven web to another can vary. For example, an element of the claimed invention is that the second bonded area is greater than the first bonded area.

In addition, as stated in the specification, a purpose of the invention is to provide a soft material adjacent to the wearer's skin. As the first material is adjacent the wearer's skin, the first material is preferably soft. The first material, as an example, may be adjacent to the wearer's skin for the entire length of the absorbent article as shown in Figure 1. Via the interpretation of the claim term "bonded area" provided by the Office Action, only a portion of the first material is required to be soft. The Office Action's proposed construction of the claim term "bonded area" would contravene the purpose of the claimed invention. Consequently, in light of the application and the purpose of the invention, the meaning of the term "bonded area" refers to a property of the first material and a property of the second material in their entireties. Therefore, the analysis provided by the Office Action, which compares a bonded area of an outermost portion of the first material to a bonded area of the entire second material, is not commensurate with the use of the term "bonded area" in amended claim 1.

Because Gilman does not teach, either expressly or inherently, all of the claim limitations of amended claim 1, amended claim 1 is not anticipated by Gilman. Moreover, because claims 3, 4, 6-9, 11, and 12, depend from claim 1, they too are not anticipated by Gilman. Therefore, Applicant asserts that claims 1, 3, 4, 6-9, 11, and 12, are in condition for allowance.

Regarding claim 10, the Office Action states:

Gilman discloses a laminate web wherein the second material has a width greater than that of the first material as set forth in figure 1.

If the entire width (band as shown in figure 1) of the second material (20) is compared to only the outermost width (i.e., the area to the left of the article in figure 1 where reference character 36" is located) of the first material (12), the second material (20) has a width greater than that of the first material.

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However, as shown in Figure 2, the first material 12 clearly extends over the second material to the apertures 18. Thus, Applicant is unsure of why the entire width of

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the second material 20 is being compared only to the outermost width of the first material 12.

Amended claim 10 recites, in part, that the "said first material has a first width and said second material has a second width, wherein said second width is greater than said first width." Claim 10 does not imply that the second material has a greater width than only a portion of the first material. Again, as an example, as shown in Figure 1 of the application, the second material has a greater width than the width of the first material throughout the absorbent article. In contrast, Gilman does not teach that the second material has a greater width than the width of the first material.

Because Gilman does not teach all of the claim limitations of claim 10, claim 10 is not anticipated by Gilman. Consequently, Applicant asserts that claim 10 is in condition for allowance.

Conclusion

In light of the above amendments and remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC § 102(b). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 3, 4, and 6-12, is respectfully requested.

Respectfully submitted,

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